

Enforcement Summary Report on Violations and Enforcement Actions

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Purpose

The following report is intended to:

1. Provide information on the Regional Board's enforcement process,
2. Identify the priorities for pursuing formal enforcement of non-compliance,
3. Discuss trends and highlight successes in achieving compliance, and
4. Identify future goals

Introduction

In 1998 the Regional Board Enforcement Coordinator position was created to improve the Regional Board's effectiveness and efficiency in enforcing water quality laws and policies. At that time, the San Diego Regional Board also created a stand-alone enforcement unit dedicated to improving discharger compliance through formal enforcement actions. Significant progress has been made in the ensuing six years. Enforcement activities have dramatically increased and more importantly, the Region has achieved marked improvements toward the goal of improving discharger compliance with Waste Discharge Requirements, environmental laws, and the greater mission of protecting water quality. The San Diego Region continues to be a model Region for implementing a clearly defined enforcement process.

To be effective, enforcement must be implemented consistently, timely, and appropriately to direct dischargers toward compliance. The primary goal of enforcement is to correct violations as soon as possible and return a discharger to compliance with waste discharge requirements (WDRs) and orders of the Board, as well as State and Federal law and regulations. Enforcement is not a separate stand-alone program, but rather an integral part of the Regional Board's ongoing effort to protect water quality. While every violation deserves an appropriate enforcement response, it is not feasible or prudent to pursue enforcement on each and every violation. The Regional Board must also balance the impact of each potential enforcement action with the cost of that action. For these reasons it is extremely important to undertake enforcement actions against the most environmentally severe and the worst non-compliance cases.

Coordinated Enforcement Process

The first step is recognizing and accurately documenting discharger non-compliance. Violations are discovered in several ways:

- Reviewing discharger self-monitoring reports
- Routine inspections
- Investigating referrals and complaints
- Discharger notification of non-compliance per NPDES/WDR requirements

Initial response to violations are typically the lowest level of enforcement, referred to as informal enforcement actions (those actions not specifically prescribed by the Water Code), and range from verbal or written notices that are issued at the time of an inspection to Notice of Violations (NOVs) issued upon discovery of violations. When

the Board does not have sufficient information to assess the extent of an impact from a discharge or non-compliance, the Regional Board can direct the discharger to provide additional water quality monitoring or technical information, pursuant to Water Code Section (WCS) 13267. Informal enforcement actions overwhelmingly result in the discharger achieving compliance.

Prioritizing Enforcement Actions

Consistent oversight is needed to identify those cases when a discharger does not achieve compliance after informal enforcement action was used or when a violation was so egregious or serious as to deserve consideration for more aggressive enforcement. In these cases a dialogue begins between technical and senior staff, the Enforcement Coordinator (EC) and Regional Board management (EO, AEO, and Division Chiefs) referred to as the Compliance Oversight Group (COG). The Regional Board counsel is also consulted throughout the process. The COG sets the priority for formal enforcement actions. The most serious, complex, or controversial enforcement cases are assigned to the Compliance Assurance Unit (CAU). In a few instances cases are referred to a local agency or the District Attorney for prosecution. The CAU has developed the expertise to manage the more complex enforcement cases and does not have competing workload commitments.

In setting priorities, the Regional Board must prioritize available resources such that enforcement actions likely to have the greatest impact on dischargers and/or for improving water quality are given the highest priority. Priorities are based on the State Board Enforcement Policy, which establishes a specific set of priorities for appropriate enforcement actions to various types of violations. The State Legislature also has enacted laws requiring certain type of enforcement. For example, as of January 2000, the California Water Code contains provisions establishing mandatory minimum penalties for violations of effluent limitations contained in NPDES permits (WCS 13385) and certain violations of storm water regulations (WCS 13399.33). More recent modifications to the Water Code now require MMPs for dischargers that submit monitoring reports more than 30 days late. These laws require the Regional Board to take timely actions, which may take precedent above other activities including those causing serious water quality violations. USEPA also has expectations for timely and appropriate enforcement for the NPDES and other Federally delegated programs.

The specific enforcement recommendations on any given case are determined based on circumstances that are unique to the case or project and documented in the discharger/facility record. The following are Regional Board priorities for initiating enforcement actions:

1. Violation of Enforcement Orders, knowingly withholding information that is required to be submitted, evidence of negligence or recalcitrance.
2. Discharges of waste that impair Beneficial Uses, including:
 - Bacteria (from Sewage Spills)
 - Violations of effluent limits. Mandatory minimum penalties (MMP) apply only to effluent violations of NPDES permits

- Sediment (from Construction projects)
 - Groundwater contamination (from underground tanks, landfills, and spills)
3. Failure to obtain permits
 4. Failure to pay annual fees
 5. Failure to submit reports. MMP apply only to late monitoring reports of NPDES permits

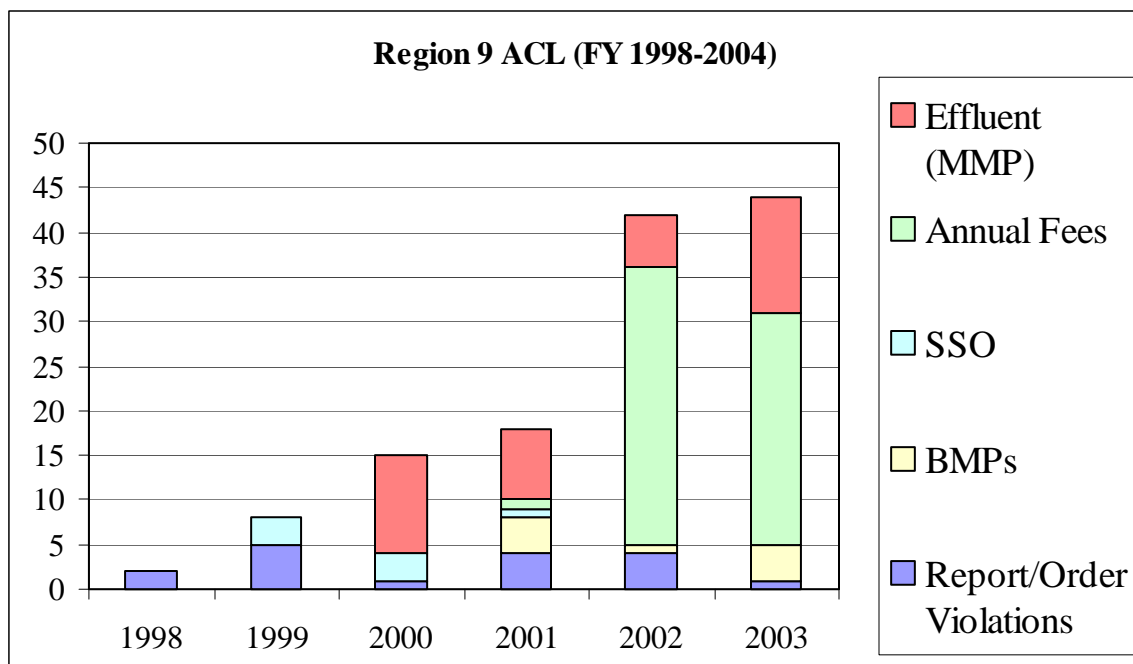
Discharger history of violations and enforcement actions are recorded into the SWIM (System for Water Information Management) Compliance database, which is a comprehensive database designed to track discharger compliance. SWIM is capable of storing a wide variety of data on the compliance history of dischargers.

San Diego Region Enforcement Trends and Successes

The following are specific successes and trends in enforcement activities at the San Diego Regional Board:

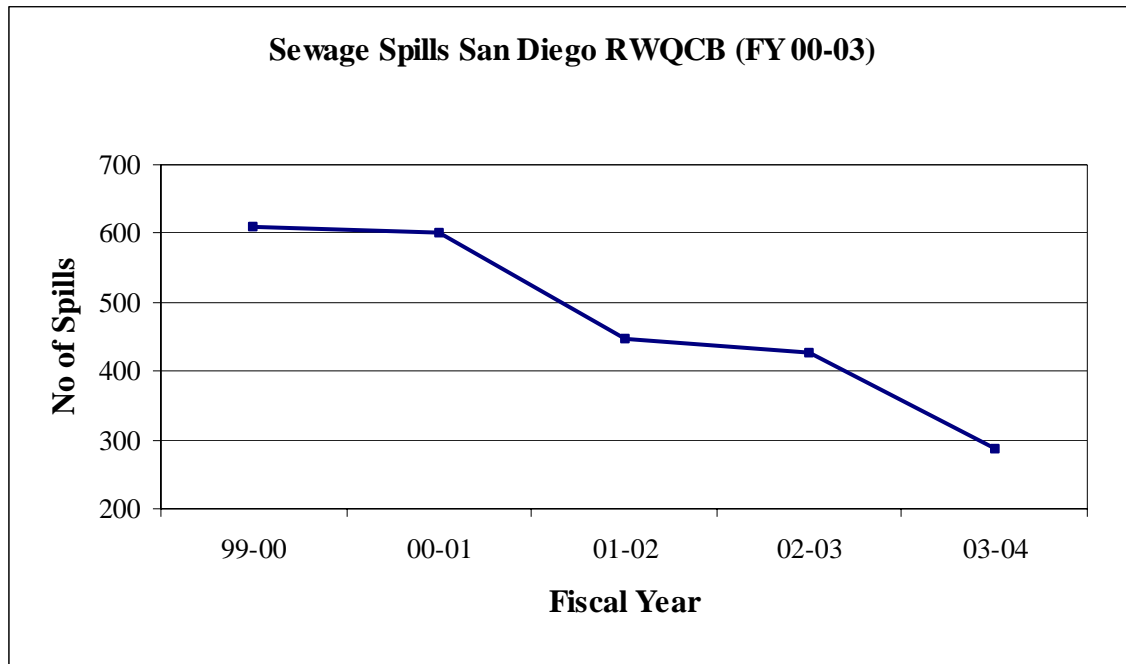
1. Increased number of Assessment of Civil Liability (ACL)

The Regional Board efforts to attain compliance are reflected in the increase in the number and type of ACLs from 2 in 1998 to 44 in 2003. Since 1998, the Regional Board assessed civil liability 129 times totaling \$5.8 million and another \$2.9 million in supplemental environmental projects, for the following violation categories: Reporting requirements or Orders (17), Inadequate Best Management Practices/sediment discharges (9), sewage spills (7), violations of effluent limitations subject (MMPs) (38) and, for non payment of annual fees (58).



2. Reduction of Sewage Spills

Sewage spills have dramatically decreased from over 600 in FY 1999 to less than 300 in 2003. This downward trend has continued during the first months of FY 2004.

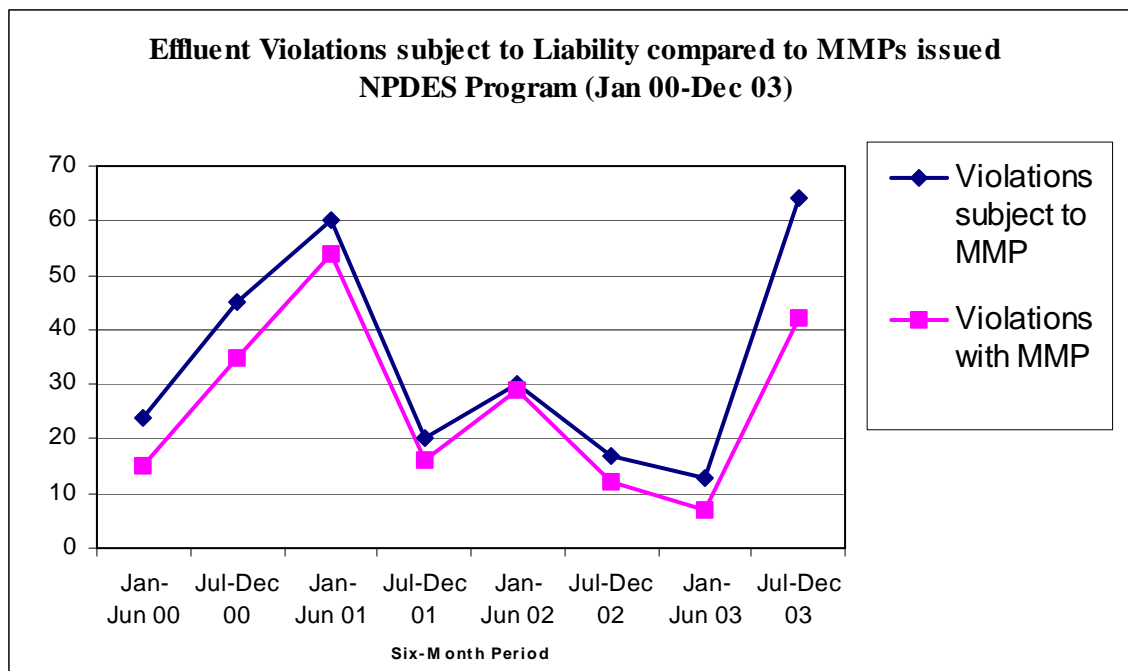


3. Violation Of Effluent Limitations: Mandatory Minimum Penalties (MMPs) for NPDES permits

Mandatory Minimum Penalties (MMPs) became effective January 1, 2000, with the passage of the “Clean Water Enforcement and Pollution Act of 1999 (SB 709) and is codified in Water Code Section 13385. Water Code Section 13385 establishes that persons who violate effluent limitations established in a National Pollutant Discharge Elimination System (NPDES) permit are liable for a MMP of \$3,000 for serious and chronic violations meeting certain requirements in any period of 6 consecutive months.

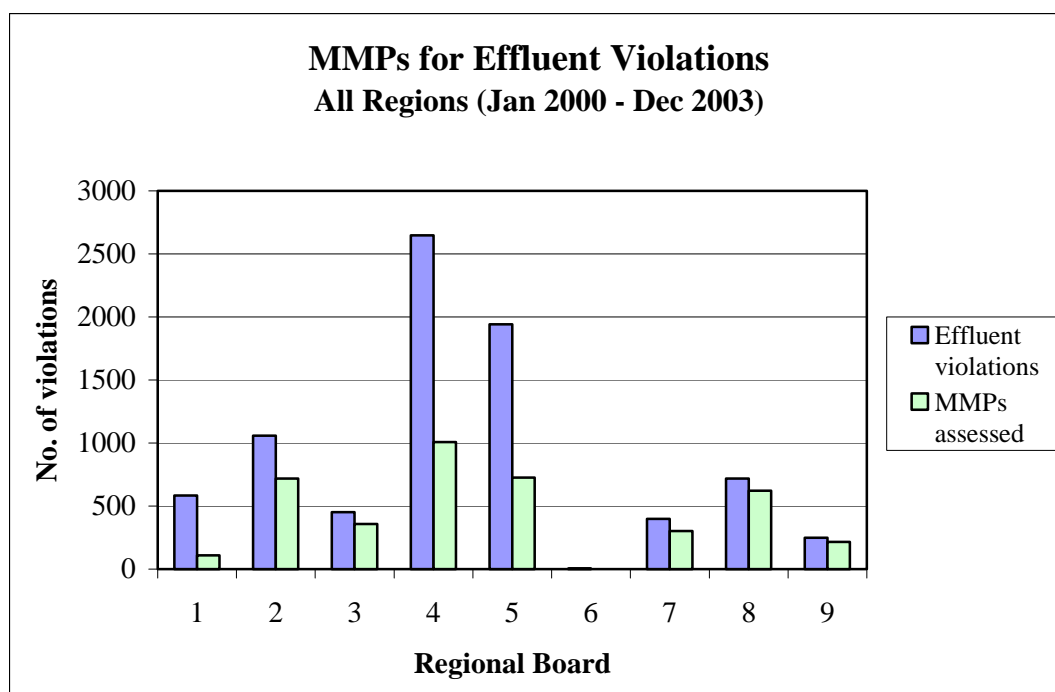
Comparison of MMPs vs. Effluent Violations

The San Diego Region has been successful in assessing liability for approx. 86% of effluent violations subject to mandatory penalties. The following graph shows penalties assessed for effluent violations compared with all effluent violations (Jan 2000 through Dec 2003). The Regional Board is now actively working on those violations occurring in 2004 and anticipates issuing complaints for assessing liability in the first half of FY 2004.



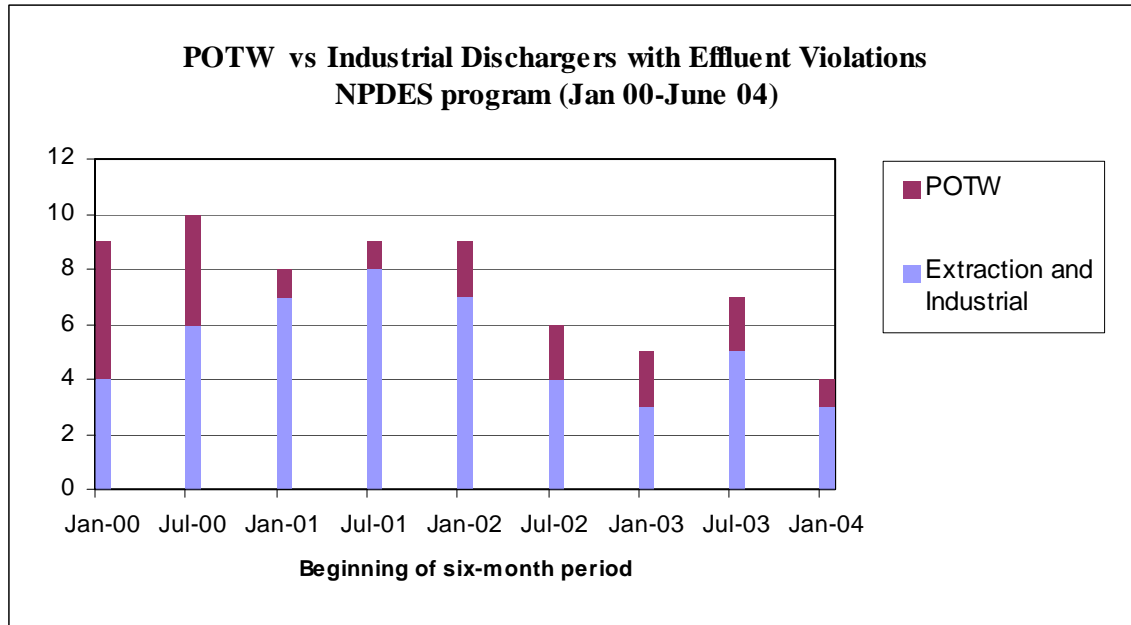
Comparison of MMP Statewide

San Diego Region can boast of having the second fewest numbers of effluent violations (next to Region 6) while maintaining one of the highest rates in completing mandatory penalties for effluent violations. The Regional Board has committed the resources necessary to maintain a constant effort to assess mandatory penalties against dischargers with violations subject to mandatory penalties.



Type of Discharger with Effluent Violations

Since 2000, the number of dischargers with effluent violations has declined from 9 in FY 2000 to 4 in early 2004. During that period, the number of Sewage Treatment plants (POTW) with violations declined from 5 to 1. Industrial and extraction dewatering projects, which represented the largest segment of dischargers with violations, also declined during since 2002.



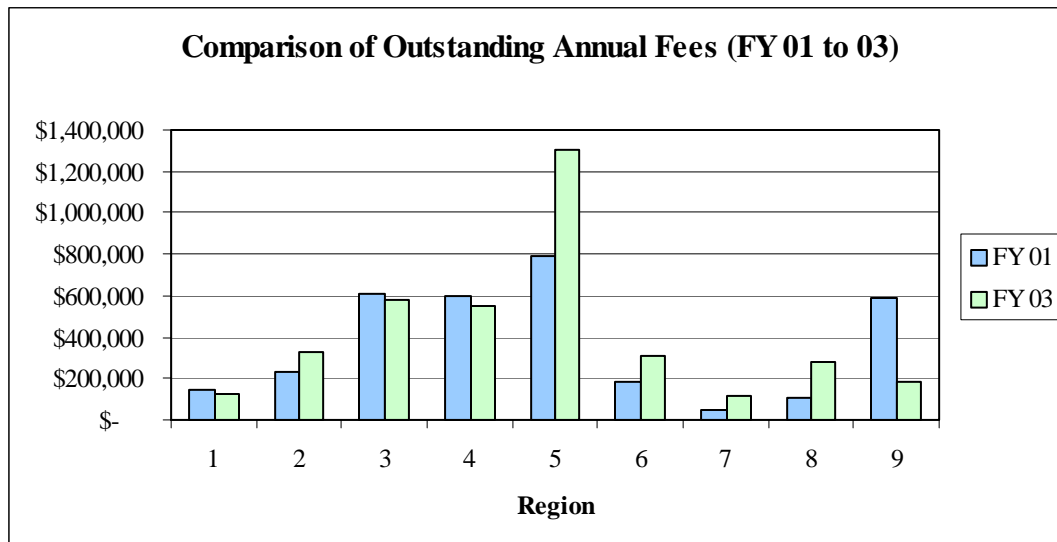
4. Improved Best Management Practices (BMP) At Construction Sites

Over the last several years enforcement actions by the San Diego Region have been instrumental in moving the construction industry toward compliance with the State Board's Construction storm water permit by implementing more sophisticated Best Management Practices and developing stormwater pollution prevention plans on construction sites throughout the Region.

5. Reduction of Non-payment of Annual fees

San Diego now ranks as one of the Regional Boards with the lowest rate of non-payment of annual fees. The Regional Board has made significant strides in reducing the amount of annual fees owed the State from \$600,000 in FY 2001 to less than \$200,000 by FY 2003. This reduction is particularly significant when the increases in billing for annual fees are considered. Between 2001 and 2003 annual fees in the San Diego Region increased 350 percent from \$1.2 to \$5.4 million. Annual fees increased Statewide from \$12.5 to \$53.3 million.

Also of significant note is that Federal military installations have committed to paying outstanding invoices.



6. Oversight of Supplemental Environmental Projects (SEPs)

In 2003 the Regional Board received a favorable audit by the California Bureau of State Audits (Bureau) for its' close oversight of SEPs and vigilant collection of resources generated from assessment of civil liability. The San Diego Regional Board has provided close oversight of SEPs to ensure projects were implemented in accordance with SEP proposals and the money allocated from the assessment of civil liability was properly expended. The San Diego Region has approved fewer numbers of SEPs than other Regions, but they generally totaled the largest dollar amount (7 projects for \$3.4 million).

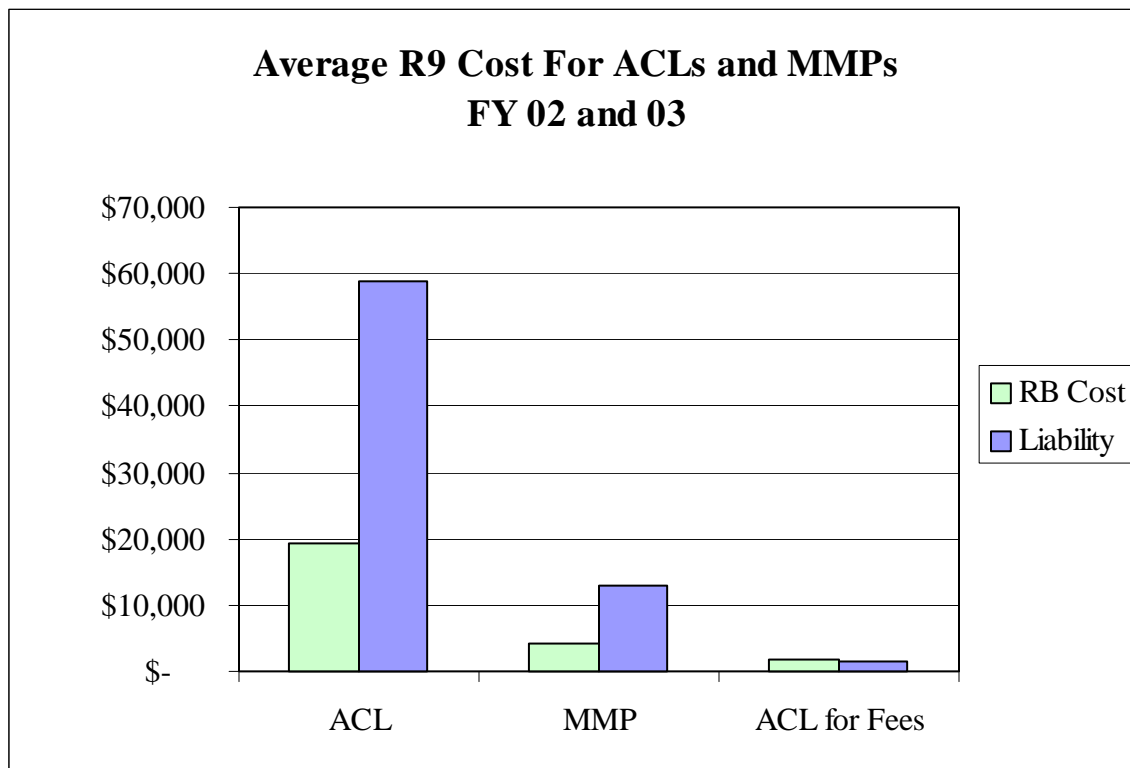
The Auditor's report also complemented the San Diego Region for effectively enforcing the terms of the SEP agreements and for collecting interest from a third party contractor that had not completed the SEP but continued to hold the fine amounts. In another recent case, the San Diego Region compelled a third party contractor to reimburse the State \$262,000 plus \$12,000 interest for a SEP project that had not been initiated and was well past the due date specified by the Regional Board.

Regional Board Costs for Assessing Civil Liability

The time and resources expended to prepare a civil liability case can be significant and must be considered when deciding the appropriate enforcement action. Generally, ACLs that are more complex and time consuming cost more to bring before the Regional Board. The following chart compares the Regional Board costs of preparing three types of civil liability cases in FY 2002 and 2003: the more complex and controversial, those that only contain mandatory penalties, and those for non-payment of annual fees.

The Regional Board cost expended for the eight civil liability cases in the first category averaged \$19,000 (ranged from \$4000 to \$28,000) compared to the average assessed

liability of \$60,000 (ranged from \$12,000 to \$105,000). The Regional Board costs expended to support the eighteen MMPs averaged \$4,000 compared to the average assessed liability of \$13,000 (from \$3,000 to \$63,000). The cost for assessing liability for non-payment of annual fees averaged approx \$1,600 and was higher than the \$1,400 average assessed liability (although the liability does not include the payment of the annual fee).



Future Goals and Objectives

1. To ensure formal enforcement actions continue to be issued in a timely and consistent manner. To support this goal the Enforcement Coordinator position and Compliance Assurance Unit should continue to be funded.
2. Continue to prioritize enforcement actions through the Compliance Oversight Group (COG). The Regional Board enforcement priorities are:
 - Violations of enforcement orders
 - Sewage Spills resulting in impacts to beneficial uses and beach closures
 - Effluent violations subject to mandatory penalties
 - Unregulated stormwater and sediment discharges from construction sites to waters of the State
 - Unauthorized filling of waters of the State

- Reduce non-payment of annual fees for waste discharge requirements, NPDES permits, construction and industrial stormwater, and other general permits
3. MMPS for Late Reports Became Effective January 2004
- Effective January 2004, the Water Code Section 13385 classifies the failure to submit a monitoring report, required of persons subject to NPDES permits, as a “serious violation” subject to a MMPs of \$3,000 for each complete 30-day period that a report is late. As a result of closely following the developments of the new law requiring MMPs for late monitoring reports, the San Diego Region was one of two Regional Boards that provided early notice to dischargers about the new law. The San Diego Region has a long history of closely tracking monitoring reports and taking swift action against discharges for failing to submit timely monitoring and other technical reports. Consequently, non-submittal of reports is not a significant problem in this region.
- As of October 2004, there appear to be approximately 5 late reports that are subject to MMP. The Regional Board will be issuing complaints to those dischargers in the near future.
4. Continue to closely monitor Supplemental Environmental Projects
5. Reinforce success by acknowledging dischargers for attaining compliance with Waste Discharge Requirements and environmental laws.
6. To provide a detailed report of all the violations and the enforcement actions to the Regional Board and the public in accordance with the State Water Resource Control Board’s Enforcement Policy.

Conclusion

Significant progress has been made in the six years the San Diego Regional Board has maintained a Compliance Assurance Unit to represent the Region on formal Enforcement matters. The Region has strived to produce evenhanded and consistent enforcement actions, sending a strong message to dischargers and that violations will be met by a prompt enforcement response to deter future non-compliance. During this period enforcement activities have dramatically increased and more importantly the Region has achieved marked improvements toward the goal of improving discharger compliance with Waste Discharge Requirements, environmental laws, and the greater mission of protecting water quality.

The San Diego Region implements its Enforcement process by integrating compliance assurance within all aspects of Regional Board processes, such as permit modifications, inspections, report reviews, and communication with regulated entities and the public that can be a model for other Boards and agencies. Regional Board prioritizes enforcement

actions that target the most egregious and chronic violators, resulting in the greatest impact in correcting discharger behavior while protecting the environment.